A **MIRZA MOHAMED TARIQ BEG MIRZA HH BEG**

v.

MARGARET LOW SAW LUI & ORS

B COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
RAUS SHARIF JCA
HASAN LAH JCA
[CIVIL APPEAL NO: W-02-(IM)-218-2009]
C 11 MAY 2009

LEGAL PROFESSION: *Discharge of solicitors - Conflict of interest - Principles of law applicable for disqualification of counsel - Breach of confidential information - Potential witness rule - Onus of proof*

D ***CIVIL PROCEDURE:*** *Solicitor - Discharge of counsel - Conflict of interest - Principles of law applicable for disqualification of counsel - Breach of confidential information - Potential witness rule - Onus of proof*

This was an appeal by the plaintiff against the decision of the E High Court granting the 2nd and 3rd defendants' application to disqualify Miss Renu Zechariah ('MRZ') from acting for the plaintiff directly or indirectly in the High Court Suit No. D4-22-1417-2008 ('D4 Suit'). On 9 May 2008, MRZ and one Ragumaran, both of them advocates and solicitors, attended a F meeting of the 7th defendant company ('company'), of which the plaintiff and the 1st to 6th defendants were directors and shareholders ('meeting'). The meeting was convened for the purpose of advising the company and its Board of Directors in relation to an investigation by the Anti-Corruption Agency ('ACA') G against the company. At the meeting, each director narrated what he or she had said to the ACA, which narration was reduced into writing by Ragumaran in the form of the meeting's minutes. Subsequently, MRZ, through her firm, appeared on record for the plaintiff in the D4 Suit against the defendants. The 2nd and 3rd H defendants then filed an application to disqualify MRZ premised on the grounds of conflict of interest and/or breach of confidence. The High Court judge held that there was a potential conflict of interest if MRZ was to continue to represent the plaintiff in the D4 Suit since MRZ, who attended the meeting, would be privy I to the confidential information disclosed at the meeting. The judge also noted that the draft minutes of the meeting were seriously

disputed by the parties, and in view of MRZ's presence at the meeting, she was a potential witness and should not appear as counsel in the D4 Suit. In the present appeal, the plaintiff argued, firstly, that the judge failed to appreciate and apply the known principles of law in regard to disqualification of counsel and, secondly, that the potential witness rule was a non-issue and had no application at the present stage of the proceeding.

Held (allowing the appeal)
Per Raus Sharif JCA delivering the judgment of the court:

(1) Two important principles of law emerge from the case of *Prince Jefri Bolkiah v. KPMG (a firm)*. Firstly, for the principle of confidentiality to apply warranting a court to intervene, there must be established a relationship of solicitor and client or some other fiduciary relationship. In the absence of such a relationship, the principle does not apply. Secondly, it depends on the facts of each case whether confidential information was conveyed. In order to bar a solicitor or other fiduciary from acting, the applicant must place before the court full particulars of the relevant confidential information that was allegedly disclosed to the solicitor or fiduciary. Mere general or vague allegations are insufficient. (para 16)

(2) Applying the above principles to the facts of the present case, the first observation to be made was that there was no evidence by any party that MRZ had acted for the company. The only evidence put forward was the single attendance of MRZ at the meeting. The defendants' evidence was that they "understood" or "believed" that MRZ was representing the company at the meeting. The minutes of the meeting, however, did not support what they "understood" or "believed". The minutes showed that Ragumaran was the company's solicitor. Against such evidence, there was the evidence of the plaintiff and MRZ who denied on oath that MRZ had ever acted for the company. According to MRZ, she was acting for the plaintiff when she attended the meeting; hence, the allegation that MRZ was acting for the company should have been rejected. Accordingly, the relationship of solicitor and client or other fiduciary relationship was absent in this case. Secondly, the only evidence in support to disqualify MRZ from acting for the plaintiff in the D4 Suit was the minutes, of which there was nothing confidential. The

A minutes recorded by Ragumaran basically contained what each of the company's directors had said to the ACA and, thus, were available to all members including the plaintiff. The plaintiff must surely be at liberty to use the minutes. Even if MRZ were not present at the meeting, there was nothing to
B stop the plaintiff from revealing the content of the minutes to MRZ for the purpose of MRZ preparing the plaintiff's case against the defendants. Consequently, the principle of breach of confidential information expounded by the House of Lords in *Prince Jefri Bolkiah (supra)* had no application to this case.
C (paras 17, 18 & 19)

(3) The potential witness rule could only arise in respect of the minutes. But MRZ had no real involvement in the content of the minutes, which were recorded by Ragumaran. Hence,
D there was nothing useful that MRZ could add on to the minutes if she were called as a witness. Moreover, the issue of MRZ being a potential witness was a non-issue. In fact, none of the defendants raised the issue in their application to disqualify MRZ. Therefore, the arguments were not canvassed
E and authorities not referred by either party to the High Court judge on this issue. Thus, it should not be a ground to disqualify MRZ for acting for the plaintiff. (paras 22 & 23)

(4) The 2nd and 3rd defendants, the parties alleging the conflict
F in this case, had not discharged the onus of proof. There was insufficient evidence to justify denying MRZ the right to represent the plaintiff at this stage of the proceeding. (para 24)

Bahasa Malaysia *Translation Of Headnotes*

G

Ini adalah rayuan plaintif terhadap keputusan Mahkamah Tinggi membenarkan permohonan defendan kedua dan ketiga untuk menghalang Cik Renu Zechariah ('MRZ'), sama ada secara langsung atau tidak langsung, dari bertindak bagi pihak plaintif
H dalam Guaman Mahkamah Tinggi No. D4-22-1417-2008 ('Guaman D4'). Pada 9 Mei 2008, MRZ dan seorang Ragumaran, kedua-duanya peguambela dan peguamcara, telah menghadiri satu mesyuarat syarikat defendan ketujuh ('syarikat'), di mana defendan-defendan pertama hingga keenam adalah pengarah dan pemegang-
I pemegang sahamnya ('mesyuarat'). Mesyuarat diadakan bagi

menasihati syarikat dan Lembaga Pengarahnya berkaitan satu penyiasatan yang dijalankan oleh Badan Pencegah Rasuah ('BPR') terhadap syarikat. Di mesyuarat, setiap pengarah telah membentangkan apa yang mereka ceritakan kepada BPR, pembentangan mana telah direkod secara bertulis oleh Ragumaran dalam bentuk minit mesyuarat. Selepas itu, MRZ, melalui firmanya, telah mewakili plaintif dalam Guaman D4 terhadap defendan-defendan. Berikutnya, defendan-defendan kedua dan ketiga telah memfail permohonan bagi menghalang MRZ atas alasan terdapat percanggahan kepentingan dan/atau perlanggaran amanah. Hakim Mahkamah Tinggi memutuskan bahawa mungkin wujud percanggahan kepentingan jika MRZ terus mewakili plaintif dalam Guaman D4 oleh kerana MRZ, yang menghadiri mesyuarat, adalah privi kepada maklumat-maklumat sulit yang didedahkan dalam mesyuarat. Hakim juga menyatakan bahawa deraf minit mesyuarat telah dipertikai dengan seriusnya oleh pihak-pihak, dan mengambilkira kehadiran MRZ di mesyuarat, beliau berpotensi menjadi seorang saksi dan kerana itu tidak harus hadir sebagai peguam dalam Guaman D4. Di rayuan semasa, plaintif berhujah, pertama, bahawa hakim gagal mempertimbang dan melaksanakan prinsip undang-undang terpakai yang berkaitan dengan kehilangan kelayakan peguam, dan kedua, bahawa kaedah berpotensi menjadi saksi adalah suatu non-issue dan tidak terpakai di peringkat prosiding di sini.

Diputuskan (membenarkan rayuan)
Oleh Raus Sharif HMR menyampaikan penghakiman mahkamah:

(1) Dua prinsip penting undang-undang telah berbangkit dari kes *Prince Jefri Bolkiah v. KPMG (a firm)*. Pertama, untuk membolehkan prinsip kerahsian dipakai dan sekaligus menjustifikasikan campur tangan mahkamah, perlulah dibuktikan bahawa wujud satu perhubungan peguamcara dan anakguam atau satu perhubungan fidusiari lain. Dalam ketiadaan hubungan sedemikian, prinsip ini adalah tidak terpakai. Kedua, ianya bergantung kepada fakta sesuatu kes sama ada maklumat rahsia telah didedahkan. Bagi menghalang seseorang peguamcara atau mana-mana fidusiari dari bertindak, pemohon mestilah meletakkan di hadapan mahkamah semua butir-butir mengenai maklumat rahsia tersebut yang dikatakan didedahkan kepada peguamcara atau fidusiari itu. Dakwaan-dakwaan kosong atau kabur adalah tidak memadai.

A **(2)** Menggunapakai prinsip di atas kepada fakta kes di sini, ulasan pertama yang boleh dibuat adalah bahawa tidak terdapat keterangan oleh mana-mana pihak bahawa MRZ pernah bertindak bagi pihak syarikat. Satu-satunya keterangan yang dikemukakan hanyalah kehadiran tunggal MRZ di mesyuarat. B Keterangan defendan-defendan adalah bahawa mereka "memahami" atau "mempercayai" bahawa MRZ mewakili syarikat di mesyuarat tersebut. Minit mesyuarat, bagaimanapun, tidak menyokong apa yang "difahami" atau "dipercayai" mereka. Minit menunjukkan bahawa peguamcara syarikat C adalah Ragumaran. Di sebalik keterangan ini, terdapat keterangan plaintif dan MRZ yang menafikan secara beersumpah bahawa MRZ pernah bertindak bagi pihak syarikat. Menurut MRZ, beliau bertindak bagi pihak plaintif apabila menghadirkan disi di mesyuarat; oleh itu dakwaan D bahawa MRZ bertindak bagi pihak syarikat semasa di mesyuarat harus ditolak. Begitu juga, hubungan peguamcara dan anakguam atau lain-lain hubungan fidusiari tidak wujud di sini. Kedua, satu-satunya keterangan menyokong yang ada bagi menghalang MRZ dari bertindak bagi pihak plaintif dalam E Guaman D4 adalah minit, sedangkan minit tersebut tidak mengandungi apa-apa rahsia pun. Minit yang direkod oleh Ragumaran pada asasnya mengandungi apa yang dikatakan oleh setiap pengarah syarikat kepada BPR, dan dengan itu boleh dilihat oleh semua ahli-ahli termasuk plaintif. Plaintif F tentunya mempunyai kebebasan untuk menggunakan minit. Begitu juga, jika pun MRZ tidak hadir di mesyuarat, tiada apa pun yang boleh menghalang plaintif dari mendedahkan minit kepada MRZ bagi membolehkan MRZ menyediakan kes plaintif terhadap defendan-defendan. Oleh itu, prinsip G pemecahan maklumat rahsia seperti yang diperkatakan House of Lords dalam *Prince Jefri Bolkiah (supra)* tidak terpakai kepada kes di sini.

(3) Kaedah berpotensi menjadi saksi hanya boleh berbangkit H setakat yang berkaitan dengan minit. MRZ bagaimanapun tiada peranan sebenar dalam penyediaan minit kerana ia direkodkan oleh Ragumaran. Oleh yang demikian, tiada suatu pun yang berguna yang boleh ditambah oleh MRZ kepada minit jikapun beliau dipanggil sebagai saksi. Selain itu, isu MRZ berpotensi I menjadi saksi adalah sebenarnya suatu non-issue. Tidak seorang pun dari defendan membangkitkan isu ini dalam

permohonan mereka untuk menghalang MRZ. Akibatnya, tiada penghujahan dibuat dan tiada autoriti dikemukakan di hadapan hakim Mahkamah Tinggi oleh mana-mana pihak berhubung isu ini. Ia dengan itu tidak seharusnya menjadi satu alasan untuk menghalang MRZ dari bertindak bagi pihak plaintif.

(4) Defendan-defendan kedua dan ketiga, pihak-pihak yang mendakwa wujud percanggahan kepentingan di sini, telah gagal memenuhi beban bukti yang terletak di bahu mereka. Tidak wujud keterangan mencukupi bagi mewajarkan mahkamah menafikan hak MRZ untuk mewakili plaintif di peringkat prosiding di sini.

Case(s) referred to:
Hardless v. Hardless AIR [1932] Allahabad 536 ***(refd)***
Prince Jefri Bolkiah v. KPMG (a firm) [1990] 2 AC 222 ***(dist)***
State v. Lalit Mohan Nanda AIR [1961] Orissa 1 ***(refd)***
Wee Choo Keong v. PP [1990] 1 CLJ 1015; [1990] 3 CLJ (Rep) 346 ***(foll)***

Legislation referred to:
Legal Profession (Practice and Etiquette) Rules 1978, rr. 3, 28

For the appellant - Harpal Singh (Renu Zechariah with him); M/s Rosley Zechariah
For the 1st, 4th, 5th & 6th respondents - Ng Sai Yeang; M/s Raja Darryl & Loh
For the 2nd & 3rd respondents - Alan Wong (Hendrew Heng with him); M/s Zain Megat & Murad
For the 7th respondent - M Reza Hassan; M/s Raja Riza & Assoc

[Appeal from High Court, Kuala Lumpur; Suit No: D4-22-1417-2008]

Reported by Suresh Nathan

JUDGMENT

Raus Sharif JCA:

[1] On 13 February 2009, the Kuala Lumpur High Court granted the 2nd and 3rd defendant's application to disqualify Miss Renu Zechariah ("MRZ") from acting for the plaintiff directly or indirectly in the High Court Suit No. D4-22-1417-2008 ("the D4 Suit"). Being dissatisfied, the plaintiff had appealed against the High Court decision. At the same time, the plaintiff had also filed a notice of motion to stay the High Court's order.

[2] The notice of motion dated 18 February 2009 was fixed before us on 23 February 2009. With the agreement of the parties, the notice of motion was treated as the appeal proper.

[3] Having heard arguments of the parties, the matter was adjourned for our consideration and decision. I now give my decision and the reasons for the same.

[4] What happened in this case is this. On 9 May 2008, MRZ and one Mr. Ragumaran, both advocates and solicitors attended a meeting of a company called Perunding Pakarmedia Sdn Bhd ("the company"). The company is the 7th defendant. The plaintiff and the 1st to 6th defendants are directors and shareholders of the company.

[5] The meeting on 9 May 2008 was convened for the purpose of advising the company and its Board of Directors in relation to an Anti Corruption Agency's ("ACA") investigation against the company.

[6] At the meeting, each director narrated what he or she had said to the ACA. The narration was reduced into writing by Mr. Ragumaran in a form of minutes of meeting.

[7] Subsequently, MRZ, through her firm, Messrs Rosley Zechariah, appears on record for the plaintiff in the D4 suit against the defendants. The case is essentially a shareholder dispute.

[8] On 12 December 2008, the 2nd and 3rd defendant filed the application to disqualify MRZ. The application was filed after several applications had come up for hearing, disposed off, orders made thereon, with the defendants being present through their respective counsel at all times.

[9] The application to disqualify MRZ was grounded on conflict of interest as it was alleged that MRZ had acted for the company previously and was now acting for the plaintiff against the company.

[10] The learned High Court Judge held that there is a potential conflict of interest if MRZ was to continue to represent the plaintiff in the D4 suit as MRZ who attended the meeting would be privy to the confidential information disclosed at the meeting. She also noted that the draft minutes of the meeting was seriously

disputed by the parties, and in view of MRZ's presence at the meeting, MRZ is a potential witness and should not appear as counsel in the D4 suit.

[11] Before us, the complaint by Mr. Harpal Singh, learned counsel for the plaintiff are two fold. First, the learned High Court Judge failed to appreciate and apply the known principle of law with regard to disqualification of counsel. Secondly, the potential witness rule is a non issue and has no application at the present stage of the proceeding.

[12] Mr. Alan Wong, learned counsel for the 2nd and 3rd defendant's submission is premised on the grounds of conflict of interest and/or breach of confidence. It may be summarised as follows. MRZ and Mr. Ragumaran were appointed as solicitors by the company to render legal advice to the company and its directors in relation to ACA investigation which involved the company. Both attended the meeting of the company on 9 May 2008, wherein various confidential information was disclosed to both solicitors through 2nd and 3rd defendant in relation to ACA investigation.

[13] Mr. Alan Wong contended that the confidential information amounts to privileged communication and is protected under the law wherein it cannot be disclosed unless with the consent of the provider of the information. Thus, MRZ continued involvement in the D4 suit raises a position of conflict of interest as MRZ had been previously appointed by the company.

[14] Mr. Alan Wong further submitted that the continued involvement of MRZ in the D4 suit would disseminate confidential information obtained in MRZ's capacity as the company's solicitor at 9 May 2008 meeting. Arising thereof, MRZ was embarrassed and ought to be disqualified from representing the plaintiff either directly or indirectly. This, he argued, is in line with r. 3 of the Legal Profession (Practice and Etiquette) Rules 1978 ("Practice and Etiquette Rules") which provides:

> 3(a) Advocate and solicitor should not to accept a brief if he is or would be embarrassed.
>
> (b) An embarrassment arises:

A (i) where the advocate and solicitor finds he is in possession of confidential information as a result of having previously advised another person in regard to the same matter;

(ii) where there is some personal relationship between him and a party or a witness in the proceedings.

B

[15] In support, Mr. Alan Wong referred to the case of *Prince Jefri Bolkiah v. KPMG (a firm)* [1990] 2 AC 222, where Lord Millett said:

C In *Rakusen*'s case (*Rakusen v. Ellis, Munday & Clarke* [1912] 1 Ch. 831) the Court of Appeal founded the jurisdiction on the right of the former client to the protection of his confidential information. This was challenged by counsel for Prince Jefri, who contended for an absolute rule, such as that adopted in the United States, which precludes a solicitor or his firm altogether from D acting for a client with an interest adverse to that of the former client in the same or a connected matter. In the course of argument, however, he modified his position, accepting that there was no ground on which the court could properly intervene unless two conditions were satisfied: (i) that the solicitor was in E possession of information which was confidential to the former client and (ii) that such information was or might be relevant to the matter on which he was instructed by the second client. This makes the possession of relevant confidential information the test of what is comprehended within the expression 'the same or a connected matter.' On this footing the court's intervention is F founded not on the avoidance of any perception of possible impropriety but on the protection of confidential information.

My Lords, I would affirm this as the basis of the court's jurisdiction to intervene on behalf of a former client. It is otherwise where the court's intervention is sought by an existing G client, for a fiduciary cannot act at the same time both for and against the same client, and his firm is in no better position. A man cannot without the consent of both clients act for one client while his partner is acting for another in the opposite interest. His disqualification has nothing to do with the confidentiality of client H information. It is based on the inescapable conflict of interest which is inherent in the situation.

…

Where the court's intervention is sought by a former client, I however, the position is entirely different. The court's jurisdiction cannot be based on any conflict of interest, real or perceived, for there is none. The fiduciary relationship which subsists between

solicitor and client comes to an end with the termination of the retainer. Thereafter the solicitor has no obligation to defend and advance the interests of his former client. The only duty to the former client which survives the termination of the client relationship is a continuing duty to preserve the confidentiality of information imparted during its subsistence.

Accordingly, it is incumbent on a plaintiff who seeks to restrain his former solicitor from acting in a matter for another client to establish (i) that the solicitor is in possession of information which is confidential to him and to the disclosure of which he has not consented and (ii) that the information is or may be relevant to the new matter in which the interest of the other client is or may be adverse to his own. Although the burden of proof is on the plaintiff, it is not a heavy one. The former may readily be inferred; the latter will often be obvious. I do not think that it is necessary to introduce any presumptions, rebuttable or otherwise, in relation to these two matters. But given the basis on which the jurisdiction is exercised, there is no cause to impute or attribute the knowledge of one partner to his fellow partners. Whether a particular individual is in possession of confidential information is a question of fact which must be proved or inferred from the circumstances of the case. In this respect also we ought not in my opinion to follow the jurisprudence of the United States.

....

It is in any case difficult to discern any justification in principle for a rule which exposes a former client without his consent to any avoidable risk, however slight, that information which he has imparted in confidence in the course of a fiduciary relationship may come into the possession of a third party and be used to his disadvantage. Where in addition the information in question is not only confidential but also privileged, the case for a strict approach is unanswerable. Anything less fails to give effect to the policy on which legal professional privilege is based. It is of overriding importance for the proper administration of justice that a client should be able to have complete confidence that what he tells his lawyer will remain secret. This is a matter of perception as well as substance. It is of the highest importance to the administration of justice that a solicitor or other person in possession of confidential and privileged information should not act in any way that might appear to put that information at risk of coming into the hands of someone with an adverse interest.

[16] I accept the above principles of law. Two important propositions emerge. First, for the principle of confidentiality to apply warranting a court to intervene, there must first be established a relationship of solicitor and client or some other fiduciary relationship. In the absence of such a relationship, the principle does not apply. The facts of *Hardless v. Hardless* AIR [1932] Allahabad 536 provide a good example as to how the principle is to be applied. In that case, the respondent to a divorce petition wrote to a counsel referring to complaints that he had against his wife and stating that he desired to take action so that he might obtain custody of the children. However, the letter did not definitely engage counsel's services. Later, the said counsel was engaged by the petitioner to act for her and the respondent husband made application to prohibit him from acting in the matter. The court dismissed the application and held as follows:

> A great ideal has to take place before counsel can be said to be engaged by a party to a suit, so that it would be unprofessional for him to appear on the other side. In order to prevent counsel appearing for the other party, he must have a definite retainer with a fee paid or he must have had such confidential information from one of the parties as would make it improper for him to appear for the other party. Nothing of this sort has occurred here. There is nothing of a confidential nature in the letter of 24th December which would prejudice the respondent if Capt. Carleton appears for the petitioner. If this sort of letter acted as a bar to counsel appearing for the opposite party, nothing would be simpler for a prospective litigant than to write to all the leading counsel in the Court a letter such as this. He need not have the slightest intention of engaging any of them. The petition is rejected.

Second, it depends on the facts of each case whether confidential information was conveyed. In order to bar a solicitor or other fiduciary from acting, the applicant must place before the court full particulars of the relevant confidential information that was allegedly disclosed to the solicitor or fiduciary. Mere general or vague allegations are insufficient. As was stated in *State v. Lalit Mohan Nanda* AIR [1961] Orissa 1:

> … the onus of proving that confidential information was conveyed lies heavily upon the applicant.

[17] Applying the above principles to the facts of the present case, the first observation that I would make is that there is no evidence by any party that MRZ had acted for the company. The only evidence put forward was the single attendance of MRZ at the meeting on 9 May 2008. The defendants' evidence was that they 'understood' or 'believed' that MRZ was representing the company at the meeting. But the minutes of the meeting does not support what they 'understood' or 'believed'. The minutes shows that Mr. Ragumaran was the company's solicitors. Against such evidence, we have the evidence of the plaintiff and MRZ who denied on oath that MRZ had ever acted for the company. According to MRZ, she was acting for the plaintiff when she attended the meeting on 9 May 2008. Hence, the allegation of MRZ was acting for the company should have been rejected. Accordingly, the relationship of solicitor and client or other fiduciary relationship is absent in this case.

[18] Second, the only evidence in support to disqualify MRZ from acting for the plaintiff in D4 suit is the minutes. My respectful view is that there is nothing confidential about the minutes. The minutes which were recorded by Mr. Ragumaran basically contained what each of the directors of the company had said to the ACA. Hence, the minutes are available to all members including the plaintiff. Surely, the plaintiff must be at liberty to use the minutes. Even if MRZ was not present at the meeting, there is nothing to stop the plaintiff from revealing the content of the minutes to MRZ for the purpose of MRZ preparing the plaintiff's case against the defendants.

[19] Consequently, it is my respectful view that the principle of breach of confidential information as expounded by the House of Lords in *Prince Jeffri Bolkiah* has no application to the facts of this case.

[20] On the issue of MRZ being a potential witness to the D4 suit, it must have to do with r. 28 of the Practice and Etiquette Rules which provides:

> (a) An advocate and solicitor shall not appear in court or in chambers in any case in which he has reason to believe that he will be a witness in respect of a material and disputed question of fact, and if while appearing in a case it become apparent that he will be such a witness, he shall not continue to appear if he can retire without jeopardising his client's interests.

[21] Wan Yahaya J (as he then was) in the case of *Wee Choo Keong v. Public Prosecutor* [1990] 1 CLJ 1015; [1990] 3 CLJ (Rep) 346 in interpreting r. 28 of the Practice and Etiquette Rules held that the court should not apply the Rules with the stringency of force of law but rather should instead utilise the rule of common sense and fair play in keeping with the tradition of maintaining a fair and impartial adversarial system.

[22] I whole heartedly agree with the observation by learned and well respected judge. In the present case, the potential witness rule can only arise in respect of the minutes. But, MRZ has no real involvement in the content of the minutes. It was recorded by Mr. Ragumaran. Hence, there is nothing useful that MRZ could add on to the minutes should she be called as a witness.

[23] Moreover the issue of MRZ being a potential witness is a non issue. In fact none of the defendants raised the issue in their application to disqualify MRZ. Hence, arguments were not canvassed and authorities not referred by either party to the learned High Court Judge on this issue. Thus, it should not be a ground to disqualify MRZ for acting for the plaintiff.

[24] In conclusion, I am of the view that a strong case must be made out before preventing counsel from acting in a particular case on the ground of conflict of interest. The onus of proof lies on the party alleging the conflict. In this case, I find that the onus has not been discharged by the 2nd and 3rd defendant. There is insufficient evidence to justify denying MRZ the right to represent the plaintiff at this stage of the proceeding.

[25] For the above said reasons, the appeal must be allowed with costs here and below. The deposit to be refunded to the plaintiff.

[26] My learned brothers Gopal Sri Ram JCA (now FCJ) and Hasan bin Lah, JCA have read this judgment in draft and have expressed their agreement to make it the judgment of the court.